

ESTTA Tracking number: **ESTTA660057**Filing date: **03/09/2015**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

**Petitioner Information**

Name	Zuffa, LLC		
Entity	limited liability company	Citizenship	Nevada
Address	2960 W. Sahara Avenue Las Vegas, NV 89102 UNITED STATES		
Attorney information	M. Feder/J. Myers/J. Krieger/J. Craft Gordon & Silver, Ltd. 3960 Howard Hughes Parkway, 9th Floor Las Vegas, NV 89169 UNITED STATES trademarks@gordonsilver.com Phone:(702) 796-5555		

**Registration Subject to Cancellation**

Registration No	4600344	Registration date	09/09/2014
Registrant	UFC Ultimate Fitness Center, LLC Ultimate Fitness Center Chula Vista, CA 91911 UNITED STATES		

**Goods/Services Subject to Cancellation**

Class 041. First Use: 1996/06/20 First Use In Commerce: 1996/06/20  
All goods and services in the class are cancelled, namely: Providing fitness and exercise facilities

**Grounds for Cancellation**

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Related Proceedings	Cancellation Nos. 92054704 and 92054868

Attachments	Petition to Cancel US Reg No 4600344.pdf(180628 bytes ) Exhibit 1 - Decl.pdf(10208 bytes ) Exhibit A - Specimen for 85709994.pdf(167366 bytes ) Exhibit B - 85709994.pdf(52455 bytes ) Exhibit C - Investigator Report.pdf(4259626 bytes ) Exhibit D- Hueso Declaration.pdf(574951 bytes ) Exhibit E - Ultimate's Appeal Brief (2).pdf(149265 bytes )
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**Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Michael N. Feder/
Name	Michael N. Feder
Date	03/09/2015

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Zuffa, LLC, a Nevada limited liability  
company,

Petitioner,

v.

UFC Ultimate Fitness Center, LLC,

Registrant.

Mark: ULTIMATE FITNESS CENTER GYM  
THE ORIGINAL SINCE 1996 (and Design)

Registration No: 4600344

Registered: September 9, 2014

**PETITION TO CANCEL**

Pursuant to 15 U.S.C. § 1064 and 37 C.F.R. §§ 2.111(b), Petitioner Zuffa, LLC (“UFC”), a Nevada limited liability company with its principal place of business at 2960 W. Sahara Avenue, Las Vegas, Nevada 89102, believes it has been and will continue to be damaged by the registration of ULTIMATE FITNESS CENTER GYM THE ORIGINAL SINCE 1996 (and Design) in International Class 41 for “[p]roviding fitness and exercise facilities” (Registration No. 4600344) (“Registered Mark”), and hereby petitions the Board to cancel the same.

As grounds for cancellation, UFC alleges as follows:

1. UFC owns the Ultimate Fighting Championship brand and is one of the world’s leading promoters of mixed martial arts (“MMA”) competitions and events.

2. UFC is informed and believes and thereupon alleges that UFC Ultimate Fitness Center, LLC (“Ultimate”) is a limited liability company organized under the laws of California, doing business as Ultimate Fitness Center, with an address at 1380 Third Avenue, Chula Vista, California 91911, which provides a fitness gym and mixed martial arts training and is a competitor of UFC.

3. UFC believes it has and will continue to be damaged by the continued registration of the Registered Mark because UFC and Ultimate have been in an ongoing trademark dispute since 2011 before the Trademark Trial and Appeal Board (Cancellation Nos. 92054704;

92054868) and in civil actions before the United States District Court for the District of Nevada (Case No. 2:13-cv-01927-JAD-PAL), the United States District Court for the District of Southern California (Case No. 14CV2870 DMS JMA) and the Ninth Circuit Court of Appeals (Case No. 14-16724), wherein Ultimate relies on its registration for the Registered Mark in support of its position. As such, UFC has a real and significant interest and a direct and personal stake in the outcome of this proceeding.

**Count I – Cancellation Based on Fraud**  
**Falsified Specimens of Use and False Statement of First Use Date**

4. Ultimate fraudulently procured Registration No. 4600344 by making: (1) material misrepresentations of fact to the United States Patent and Trademark Office (“USPTO”) in connection with its application; (2) which Ultimate knew were false; and (3) Ultimate’s misrepresentations were made with the intent to deceive the USPTO.

5. UFC is informed and believes and thereupon alleges that Ultimate committed fraud in procuring its registration for the Registered Mark.

6. UFC is informed and believes and thereupon alleges that Ultimate provided the USPTO with a false first use date, which it knew to be false and/or misleading with the willful intent to deceive the USPTO for purposes of obtaining a registration.

7. UFC is informed and believes and thereupon alleges that Ultimate created a computer-generated fake specimen of use that did not exist at the time it filed its application, and still does not exist to this day, with the willful intent to deceive the USPTO for purposes of obtaining a registration.

8. UFC is informed and believes and thereupon alleges Ultimate fraudulently obtained registration of the Registered Mark because Ultimate had not used the Registered Mark in commerce, as defined by the Trademark Act, on the date indicated in the application.

9. UFC is informed and believes and thereupon alleges that Ultimate’s false and/or misleading statements were material because absent such misrepresentations, the USPTO would not have issued the registration for the Registered Mark.

10. On or about December 10, 2013, Ultimate filed a trademark application for the Registered Mark based on Ultimate's alleged use of the Registered Mark in connection with the identified services in International Class 41; the application was assigned Serial No. 86139383.

11. In its application, Ultimate claimed a first use date of at least as early as June 20, 1996.

12. On or about December 10, 2013, Ultimate simultaneously submitted in conjunction with its application a specimen of use, namely, a photograph which Ultimate described as its "store front display window." ("False Specimen").

13. In support of the False Specimen, Ultimate submitted a Declaration, under penalty of perjury, stating that all statements made in the application were believed to be true.

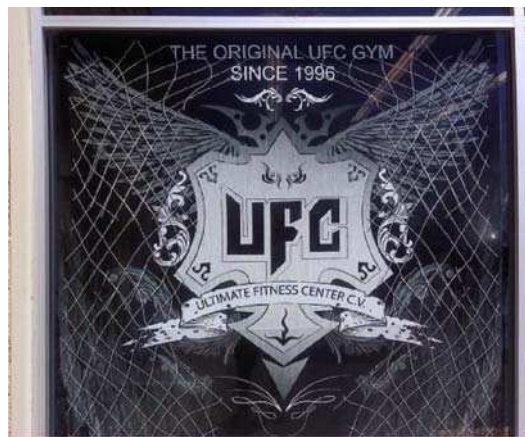
14. UFC is informed and believes and thereupon alleges that Ultimate's Declaration made under penalty of perjury in support of the specimen in conjunction with its application was false and was knowingly made with the intent to commit fraud upon the USPTO.

15. Specifically, UFC is informed and believes and thereupon alleges the False Specimen of the store front display window is a computer generated fabrication.

16. UFC is informed and believes and thereupon alleges that the False Specimen submitted in Ultimate's application at issue here was a computer-generated alteration of the actual store front and not an accurate photograph of the actual store front.

17. UFC is informed and believes and thereupon alleges that the same False Specimen was first created on or about September 17, 2013 to overcome the USPTO's Office Action against another one of Ultimate's other applications for the mark ULTIMATE FITNESS CENTER GYM THE ORIGINAL SINCE 1996 (and Design) (Ser. No. 85709994) ("First Fraudulent Application"), which UFC is simultaneously seeking to cancel the resulting registration as well.

18. In support of that First Fraudulent Application, on August 27, 2013, Ultimate submitted a specimen depicting the front window of its Chula Vista facility, as shown below.



See a true and correct copy of Ultimate's August 27, 2013 specimen attached as **Exhibit A** to the Decl. of Joanna M. Myers attached hereto as **Exhibit 1**.

19. An Office Action issued on September 17, 2013 against Ultimate's First Fraudulent Application, in which the USPTO examining attorney refused the specimen because it did not show the mark as applied-for.

20. That same day Ultimate submitted a substitute specimen in support of Ultimate's First Fraudulent Application, which contained a new image of the same front window but displayed an entirely different trademark (as shown below)—which is identical to the False Specimen at issue herein.



See a true and correct copy of Ultimate's September 17, 2013 specimen attached to the Decl. of

Joanna M. Myers as **Exhibit B**.

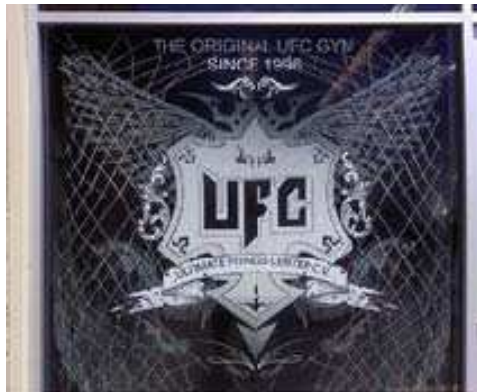
21. UFC is informed and believes and thereupon alleges that the False Specimen submitted for both the First Fraudulent Application and the application at issue herein for the Registered Mark, does not, and never did actually exist, but rather is merely a computer-generated alteration of the real storefront.

22. UFC is informed and believes and thereupon alleges that the False Specimen was manufactured using computer software and/or by superimposing the Registered Mark onto an image of the front window of Ultimate's facility in Chula Vista, California.

23. In furtherance of preparing a response in a civil dispute between the parties, on or about January 26, 2015, UFC engaged an investigator to visit Ultimate's fitness gym located at 1380 Third Ave., Chula Vista, California. *See* a true and correct copy of the investigator's report attached to the Decl. of Joanna M. Myers as **Exhibit C**.

24. The investigator photographed the location, including Ultimate's front store window, which is the subject of the False Specimen of the front store window at issue herein.

25. Based upon the investigator's report, as of January 26, 2015, the front window of Ultimate's facility in Chula Vista still bore the original decal submitted by Ultimate in support of its First Fraudulent Application, as shown below.



First Specimen



January 26, 2015

///

///

26. UFC is informed and believes that on the date of this filing, the Ultimate's store front window still bears the window decal shown below.



27. UFC is informed and believes that Ultimate's front store window never bore the window decal shown below.



28. Based on the foregoing, UFC is informed and believes and thereupon alleges that Ultimate created and submitted the False Specimen with the knowledge that the False Specimen was a fabricated specimen.

29. Based on the foregoing, UFC is informed and believes and thereupon alleges that Ultimate created the False Specimen with knowledge that the False Specimen did not exist and submitted the False Specimen to the USPTO with the intent to deceive the USPTO.

30. UFC is informed and believes and thereupon alleges that Ultimate's submission of the False Specimen and Mr. Hueso's supporting declaration made under penalty of perjury to the USPTO were material misrepresentations because absent such misrepresentations, the

USPTO would not have issued the registration for the Registered Mark.

31. Ultimate filed the False Specimen at issue here on December 10, 2013—only seven days after its First Fraudulent Application proceeded to registration on December 3, 2013.

32. UFC is informed and believes and thereupon alleges that once Ultimate had confirmation its deceptive behavior in the First Fraudulent Application (involving several false specimens) was persuasive upon the USPTO, it proceeded to use a false specimen as support for fraudulently obtaining a registration for the Registered Mark.

33. Furthermore, UFC is informed and believes and thereupon alleges that Ultimate manufactured false specimens and provided false dates of first use in numerous other trademark applications, which resulted in registrations, namely, Registration Nos. 4600347, 4445286, and 4608679.

34. UFC is informed and believes and thereupon alleges that Ultimate's material misrepresentations in the present application, including Mr. Hueso's declaration made under the penalty of perjury, constitute fraud under the Trademark Act warranting cancellation of Registration No. 4600344.

35. UFC is informed and believes and thereupon alleges that Ultimate would not have received Registration No. 4600344 identifying a date of first use of at least as early as June 20, 1996, for the services identified therein but for the willful, false, material misrepresentations in the Declarations and false specimen submitted to the USPTO under the penalty of perjury.

36. Based on the foregoing, UFC is informed and believes and thereupon alleges the application that resulted in Registration No. 4600344 constituted a fraud on the USPTO and Ultimate's registration should be cancelled in its entirety.

**Count II - Cancellation Based on Fraud**  
**False Statement of Use in Commerce**

37. UFC herein repeats and re-alleges the allegations set forth in paragraphs 1-36, inclusive, as fully set forth herein.

38. UFC is informed and believes and thereupon alleges that Ultimate is not using the

Registered Mark “in commerce” as defined in the Trademark Act; rather, if Ultimate is using the Registered Mark at all, Ultimate’s use is limited to *intrastate* commerce within the state of California and the San Diego area.

39. UFC is informed and believes and thereupon alleges that Ultimate knowingly made false, material misrepresentations of fact that the Registered Mark has been used “in commerce” in connection with the services identified in the registration, with the willful intent to deceive the USPTO for the purposes of obtaining a registration.

40. To establish use “in commerce” under the Trademark Act, Ultimate must be offering services in commerce between more than one state or U.S. territory, or in commerce between the U.S. and another country. *See* 15 U.S.C. § 1127.

41. UFC is informed and believes and thereupon alleges the Declaration signed by Ultimate’s owner, Mr. Rob Hueso, under penalty of perjury, contained false, material, misrepresentations to the USPTO.

42. In its application, Rob Hueso, on behalf of Ultimate, declared under penalty of perjury that the Registered Mark was first used in commerce as early as June 20, 1996.

43. Moreover, Mr. Hueso declared under penalty of perjury that “all statements made of [its] own knowledge are true.”

44. UFC is informed and believes and thereupon alleges that Ultimate knew it was not using the Registered Mark in commerce as of the filing date of the application that matured into Registration No. 4387151.

45. UFC is informed and believes and thereupon alleges that Ultimate operates and offers its services out of a single location located in Chula Vista, California.

46. In the civil dispute between UFC and Ultimate, to support Ultimate’s motion for dismissal based on a lack of personal jurisdiction, Mr. Hueso submitted a declaration under penalty of perjury stating:

Any and all marketing for [Ultimate] was only directed at and published in the greater San Diego area.

Because [Ultimate] is only located in San Diego, [Ultimate] has not intentionally directed any communications at Nevada residents to obtain their business.

[Ultimate] also maintains a website at the URL [www.ultimatefitnesscenterchulavista.com](http://www.ultimatefitnesscenterchulavista.com). Although the website is viewable on the Internet, it only lists California contact information has [sic] how to find [Ultimate's] location.

See a true and correct copy of Mr. Hueso's Declaration attached to the Decl. of Joanna M. Myers as **Exhibit D**.

47. Moreover, in Ultimate's Appellee Brief filed less than two weeks ago before the Ninth Circuit Court of Appeals on February 27, 2015, Ultimate states it "operates a single gym in Chula Vista, California" and "only advertises in the greater San Diego area." See a true and correct copy of an excerpt of Ultimate's Appellee Brief attached to the Decl. of Joanna M. Myers as **Exhibit E**.

48. Ultimate emphasizes in its Appellee Brief that its website is "passive in nature and identifies its only address at 1380 Third Avenue, Chula Vista, California 91911." *Id.*

49. Based, at a minimum, on Ultimate's own statements that it has a single location that directs all of its marketing exclusively within the state of California, UFC is informed and believes and thereupon alleges that Ultimate's declaration made under penalty of perjury to the USPTO that the Registered Mark was first used "in commerce" at least as early as June 20, 1996, was a material misrepresentation of fact, which Ultimate knew to be false and misleading, and was made with the intent to deceive the USPTO.

50. UFC is informed and believes and thereupon alleges that Ultimate's false statement made under the penalty of perjury that Ultimate has used the mark "in commerce" was a material misrepresentation because Ultimate's use, if any, is limited to *intrastate* commerce and as such, the USPTO would not have issued the registration for the Registered Mark.

51. In addition to making false statements that Ultimate has used the mark "in commerce," UFC is informed and believes and thereupon alleges that because Ultimate created

the False Specimen to deceive the USPTO into issuing multiple registrations, Ultimate's declaration made under penalty of perjury that the Registered Mark was first used in commerce at least as early as June 20, 1996 was also a material misrepresentation of fact, which Ultimate knew to be false and misleading, and was made with the intent to deceive the USPTO.

52. Based on the foregoing, UFC is informed and believes and thereupon alleges the application that resulted in Registration No. 4600344 constituted a fraud on the USPTO.

53. Accordingly, UFC requests Ultimate's registration be cancelled in its entirety.

WHEREFORE, UFC prays the cancellation be sustained and Reg. No. 4600344 be cancelled.

Dated: March 9, 2015.

Respectfully submitted,

GORDON SILVER

/s/Michael N. Feder  
Michael N. Feder  
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(702) 796-5555 (phone)  
(702) 947-9684 (fax)

**CERTIFICATE OF SERVICE**

I hereby certify that, on March 9, 2015, a true and complete copy of the foregoing **PETITION TO CANCEL** has been served by United States mail, first class postage prepaid, on the following correspondent of record for Registrant:

UFC Ultimate Fitness Center, LLC  
1380 3rd Avenue  
Chula Vista, California 91911

/s/ Michelle Ledesma  
Michelle Ledesma, an employee of  
Gordon Silver

## DECLARATION OF JOANNA M. MYERS

1. I, Joanna M. Myers, am an attorney licensed to practice law in the states of Nevada and California and am an associate at the law firm of Gordon Silver, attorneys for Petitioner Zuffa, LLC (“UFC”), and make this Declaration in support of UFC’s Petition to Cancel Reg. No. 4600344.

2. I am over the age of 18 and am mentally competent. I have personal knowledge of the facts stated herein, except where stated upon information and belief, and as to facts stated upon information and belief, I am informed of those facts and believe them to be true. If called upon to testify as to the matters herein, I could and would do so.

3. On or about February 23, 2015, I visited the United States Patent and Trademark Office’s (“USPTO”) online Trademark Status and Document Retrieval system (“TSDR”) and retrieved a copy of the specimen submitted by Ultimate Fitness Center LLC (“Ultimate”) on August 27, 2013 in support of its application Serial No. 85709994. A true and correct copy of the August 27, 2013 specimen in the TSDR is attached hereto as **Exhibit A**.

4. On or about February 23, 2015, I visited the TSDR and retrieved a true and correct copy of the specimen submitted by Ultimate on September 17, 2013 in support of its application Serial No. 85709994. A true and correct copy of the September 17, 2013 specimen is the TSDR is attached hereto as **Exhibit B**.

5. On or about January 26, 2015, I engaged a third-party investigator on behalf of UFC to visit Ultimate Fitness Center, LLC’s (“Ultimate”) fitness gym facility located at 1380 Third Avenue, Chula Vista, California 91911. A true and correct copy of the investigator’s report is attached hereto as **Exhibit C**, redacted to remove the faces of individuals and a license plate in the images.

6. In the parties’ dispute before the United States District Court for the District of Nevada (Case No. 2:13-cv-01927-JAD-PAL), in support of Ultimate’s motion for dismissal based on a lack of personal jurisdiction dated March 27, 2014, Mr. Hueso submitted a declaration under penalty of perjury stating:

Any and all marketing for [Ultimate] was only directed at and published in the greater San Diego area.

Because [Ultimate] is only located in San Diego, [Ultimate] has not intentionally directed any communications at Nevada residents to obtain their business.

[Ultimate] also maintains a website at the URL [www.ultimatefitnesscenterchulavista.com](http://www.ultimatefitnesscenterchulavista.com). Although the website is viewable on the Internet, it only lists California contact information has [sic] how to find [Ultimate's] location.

A true and correct copy of excerpted pages from Mr. Hueso's Declaration is attached hereto as **Exhibit D**.

7. Ultimate's Appellee Brief was filed before the Ninth Circuit on February 27, 2015. A true and correct copy of excerpted pages from of Ultimate's Appellee Brief is attached hereto as **Exhibit E**.

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, declares that all statements made of her own knowledge are true; and all statements made on information and belief are believed to be true.

DATED this 9th day of March, 2015.

/s/ Joanna M. Myers

JOANNA M. MYERS

THE ORIGINAL UFC GYM  
SINCE 1996







**Front**



**Back**





## **SUBJECT INFORMATION**

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**Name:** Ultimate Fitness Center

**DOB:**

**Address:**

**Phone:**

## **INVESTIGATION SUMMARY**

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The investigator located and obtained photographs at the Ultimate Fitness Center in Chula Vista, CA (see enclosed).

## **INVESTIGATION DETAILS**

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### **1/26/15 – Case Update**

On January 26, 2015 Investigator responded to 1380 3<sup>rd</sup> Ave, Chula Vista CA to photograph the location and see if they had any logo items in the shop. Upon arrival, photographs were taken of the front:







Posing as a customer, Investigator photographed the inside of the shop and purchased a t-shirt for \$15.00.





Matthew J. Faust, Cal. State Bar No. 254145 (*Pro Hac Vice Pending*)

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Attorneys for Defendants

UFC Ultimate Fitness Center, LLC

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ZUFFA, LLC, a Nevada Limited  
Liability Company,

Plaintiff,

vs.

UFC ULTIMATE FITNESS CENTER,  
LLC, a California Limited Liability  
Company,

Defendant.

Case No.: **2:13-CV-01927-JAD-(PAL)**

DECLARATION OF ROBERT HUESO IN  
SUPPORT OF MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT OF MOTION TO DISMISS  
PURSUANT TO F.R.C.P. 12 (B)(2) AND  
MOTION TO CHANGE VENUE

Judge: Hon. Jennifer A. Dorsey

**HEARING/ORAL ARGUMENT  
REQUESTED**

I, Robert Hueso, declare as follows:

1. I am the owner of defendant in this matter.
2. Except where otherwise indicated, I have personal knowledge of the following facts, and if called as a witness, could and would testify competently thereto.

1           3. This declaration is made in support of UFC Ultimate Fitness Center, LLC's  
2           ("UFC") Motion to Dismiss pursuant to F.R.C.P. 12(B)(2) and Motion to  
3           Change Venue.  
4

5           **Current Dispute with Zuffa**

- 6           4. I am the sole owner, officer, and director of UFC, the defendant in this  
7           matter.  
8  
9           5. UFC's sole business location is at 1380 Third Avenue, Chula Vista,  
10          California. This location has been in continuous operation since its opening in  
11          1996.  
12  
13          6. UFC has been using the name "UFC Ultimate Fitness Center" since 1996.  
14  
15          7. UFC filed an application for the trademark "UFC Ultimate Fitness Center,  
16          LLC" on September 10, 2010.  
17  
18          8. Unbeknownst to me, Zuffa had also moved for trademark registration for its  
19          "UFC mark" for gym services.  
20  
21          9. In response to this, UFC has filed two cancellation proceedings with the  
22          USPTO Trademark and Appeal Board ("TTAB").  
23  
24          10. These proceedings have been consolidated and are currently suspended.

25  
26           **Contacts with Nevada**  
27  
28


18. Any and all marketing for UFC was only directed at and published in the greater San Diego area.

19. Because UFC is only located in San Diego, UFC has not intentionally directed any communications at Nevada residents to obtain their business.

20. UFC also maintains a website at the URL [www.ultimatefitnesscenterchulavista.com](http://www.ultimatefitnesscenterchulavista.com). Although the website is viewable on the Internet, it only lists California contact information, does not interact with the public and merely provides information as how to find UFC's Location. A true and correct copy of the "location" page is attached hereto as Exhibit A.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct. Executed in the County of San Diego, California.

Dated: 4/19/14



Robert Hueso

**In The United States Court of Appeals  
for the Ninth Circuit**

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**ZUFFA, LLC,**

*Plaintiff / Appellant;*

**vs.**

**UFC ULTIMATE FITNESS CENTER,  
LLC;**

*Defendant / Appellee*

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*Court of Appeals Case No.:*  
**14-16724**

*District Court Case No.:*  
**2:13-CV-01927-JAD-PAL**

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**APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA  
(HONORABLE JENNIFER A. DORSEY)**

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**APPELLEE'S ANSWERING BRIEF**

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UFC Ultimate Fitness Center, LLC

hands. Despite throwing its name around, Zuffa failed to identify even a single instance in which Ultimate had done business in or targeted Nevada. Thus, Ultimate responded by filing a motion to dismiss for want of personal jurisdiction. The District Court agreed with Ultimate, explaining that Zuffa had completely failed in demonstrating that Ultimate had targeted or directed any acts into Nevada. This appeal ensued. Because Ultimate's motion was properly granted, this Court should affirm the District Court's ruling.

### **JURISDICTIONAL STATEMENT**

Appellee does not contest Appellant's statement regarding subject matter jurisdiction.

### **STATEMENT OF THE CASE**

Defendant / Appellee UFC Ultimate Fitness Center, LLC (hereinafter "Ultimate") operates a single gym in Chula Vista, California where it has done business since 1996. [II E.R. 256; III E.R. 430.] Throughout its existence, it has utilized the trademark "UFC Ultimate Fitness Center" in connection with its gym in San Diego County. *Ibid* at 256. It does no business in the state of Nevada

and does not advertise in or seek gym memberships from residents of Nevada. *Ibid* at 259. Ultimate only advertises in the greater San Diego area. *Ibid*. It also maintains a website which is viewable on the Internet. *Ibid*. This website is passive in nature and identifies its only address as 1380 Third Avenue, Chula Vista, California 91911. *Ibid* at 259, 261. The website also identifies the gym's telephone number which includes a San Diego area code. *Ibid* at 259, 261. Throughout these proceedings, Zuffa has never contended that Ultimate has done any business beyond what it does in its Chula Vista gym. [III E.R. 430.] Indeed, Zuffa's complaint in this action did not contain any factual allegations that Ultimate had intentionally targeted Nevada with any of its advertising. [III E.R. 427-439.]

In 2010, Ultimate attempted to register its trademark with the U.S.P.T.O., only to learn that Zuffa, despite its relative newness to the gym industry, had already registered its marks, and claimed use as early as 2009 (more than ten years after Ultimate's first use). [II E.R. 256.] In fact, Zuffa freely admits that its first gyms were not opened in Nevada, but in California. (AOB 5.) Accordingly, Ultimate petitioned the U.S.P.T.O. for the cancellation of Zuffa's marks based upon Ultimate's long-standing use. *Ibid*. While the cancellation